

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

JOSEPH MANTHA, *on behalf of himself
and all others similarly situated,*

Plaintiff,

v.

QUOTEWIZARD.COM, LLC,

Defendant.

Civil Action No. 1:19-cv-12235-LTS

AFFIDAVIT OF COUNSEL

I, Kevin P. Polansky, do hereby state as follows:

1. I am an attorney licensed to practice law in Massachusetts and I am counsel of record for Defendant QuoteWizard.com, LLC (“QuoteWizard”) in this action.

2. I have personal knowledge of the matters set forth in this Affidavit. I submit this Affidavit pursuant to the Notice filed together herewith regarding QuoteWizard’s production of documents Bates Stamped QuoteWizard_Mantha000195 (“DNC- Part1 – REDACTED”), QuoteWizard_Mantha000196 (“DNC- Part2 – REDACTED”), and QuoteWizard_Mantha000197 (“DNC- Part3 – REDACTED”) (collectively, the “DNC Records”) on November 9, 2020 to Plaintiff Joseph Mantha (“Plaintiff”). These documents, which were three separate Excel spreadsheets in .xls format, contained “do not call” data sent to QuoteWizard by Drips Holdings, LLC (“Drips”) (but do not include consumer communications between Drips and consumers, which is not part of the data sent by Drips).

3. These are the same records that form the basis of the ongoing discovery dispute over Drips’s communications, which are not a part of the records. See ECF No. 112

(“[D]efendant shall produce all ‘Do Not Call’ requests relating to telemarketing conducted on behalf of QuoteWizard by Drips.”); *see also* ECF No. 132 (“QuoteWizard shall provide to plaintiff ... all comments by consumers related to the 46,000 Do Not Call requests, ... made by consumers who received telemarketing texts from QuoteWizard (including those made on behalf of QuoteWizard by Drips”).

4. On or around April 13, 2021, I learned for the first time that, due to an unintentional human error by a staff member in my office, the DNC Records had been inadvertently converted to a file format that could not sustain the amount of data in the original files that my office received directly from QuoteWizard. Therefore, the DNC Records, as produced to Plaintiff, did not contain the full amount of data in the original files, which is what my office intended to produce and thought it had produced on behalf of QuoteWizard.

5. Specifically, each of the Excel spreadsheets in the DNC Records as produced contained only 16,384 rows of data and cut off at that point. The original files included a total of 2,095,340 rows across three spreadsheets as follow: DNC- Part 1 contained 1,000,000 rows of data; DNC- Part 2 contained 1,000,000 rows of data; and DNC- Part 3 contained 95,340 rows of data.

6. Once I learned of this inadvertent error, my office began immediately investigating the cause of such error and how to remedy the same in order to immediately produce the full, original files (with telephone numbers redacted) as we had intended to do.

7. I confirmed that we had received the original files we were to produce on November 3, 2020 from QuoteWizard directly. I also confirmed that such files were provided to a staff member in my office on November 5, 2020 to redact the confidential telephone numbers

of consumers appearing in Column A of the files. The staff member completed the redactions and the files were produced to Plaintiff on November 9, 2020.

8. In investigating what caused the DNC Records to be produced with less data than the original files, I consulted with the staff member who handled the redactions. I confirmed the following that led to the inadvertent error in production:

- (a) The original files as received from QuoteWizard were three spreadsheets, all of which were in .csv format;
- (b) In redacting the contents of Column A (other, third-party consumers' confidential telephone numbers) for each of the three spreadsheets, the staff member in my office filled all of the cells in that column in black, and then password-protected those cells so that no subsequent user could view or alter their contents without knowing the password;
- (c) However, when the staff member in my office tried to password protect the .csv files in Microsoft Excel, he was prompted to re-save the files in an .xls file format in Excel, which he did, using Microsoft Excel 5.0/95 Workbook;
- (d) In investigating the inadvertent error, I have come to confirm that, when converting each of the three .csv files to .xls files, the converted .xls files could only contain a maximum of 16,384 rows, therefore cutting off all subsequent rows. To confirm this is the case, my office tested converting the .csv files to .xls files on April 14, 2021 and, in each test, confirmed that the .xls files contained a maximum of 16,384 rows;
- (e) Therefore, once the staff member converted each spreadsheet from .csv to .xls format in order to redact and password protect the data in Column A of each spreadsheet, the spreadsheets all cut off at exactly 16,384 rows;
- (f) The staff member who completed the redactions did not realize that the .xls files had these limitations or that any data had been cut off during redaction and conversion;
- (g) The spreadsheets were then produced in their redacted/converted form (in .xls format), therefore inadvertently cutting off the data from the original files.

9. My office discovered the inadvertent error on April 13, 2021, investigated and discovered the cause of the inadvertent error on April 14, 2021 (*see* Paragraph 7(a)-(g)), and now files this Notice to inform the Court of the same. Simultaneously, as explained below, my office

on behalf of QuoteWizard has explained the inadvertent error to Plaintiff and produced the original files, with all data (with the exception of telephone numbers redacted), to Plaintiff on this date, April 16, 2021.

10. The inadvertent error was solely an unintentional human error, and no one in my office knew that the DNC Records had been produced with missing data until April 13, 2021.

11. Once the inadvertent error was realized on April 13, 2021, my office on behalf of QuoteWizard began immediately preparing a supplemental production to produce the full, original files that we had originally intended to produce, with the confidential telephone numbers of other consumers still redacted.

12. Staff in my office informed me that, in order to produce these files with all data preserved, they are required to be produced in the .csv format. As such, in order to produce these files, my firm's staff kept the files in .csv format and manually redacted the confidential telephone numbers of other consumers in Column A of each file. The files were produced to Plaintiff's counsel in this format on April 16, 2021, with an explanation of the inadvertent error discussed above. The files as produced on April 16, 2021 constitute the full and complete files as received by my office from QuoteWizard, with the exception that Column A, containing the confidential telephone numbers of consumers, has been redacted.

13. I file this Affidavit to apprise the Court of my office's error, which I take full responsibility for, in light of the ongoing discovery dispute with Plaintiff.

Signed under the pains and penalties of perjury, this 16th day of April, 2021.

/s/ Kevin P. Polansky
Kevin P. Polansky